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ILLINOIS COMMERCE COMMISSION

ORIGINAL
ILLINOIS COMMERCE COMMISSION
Mar 8 8 59 AM '01
CHIEF CLERK'S OFFICE

Cook County State's Attorney)

Motion for Stay of Commencement of)
Customer Education and Order Requiring)
Neustar to Demonstrate that the 847 NPA)
Is, in Fact, Exhausted)

ICC Docket No. 01-0066

**NEXTEL COMMUNICATIONS, INC.'S RESPONSE
TO THE COOK COUNTY STATE'S ATTORNEY'S
MOTION FOR SUBPOENAS DUCES TECUM**

Nextel Communications, Inc. ("Nextel") hereby objects to the Motion for Issuance of Subpocnas Ducce Tecum filed on February 28, 2001 by the Cook County State's Attorney's Office ("State's Attorney"). In its motion, the State's Attorney fails to provide support for its unprecedented request that the Hearing Examiners issue subpoenas to (1) NANPA, (2) all telecommunications service providers holding NXX and NXX-X codes in the 847 NPA, or (3) the Illinois Commerce Commission ("Commission") Staff requiring each of those entities to produce and disclose to the State's Attorney all NXX and NXX-X code utilization data filed, or required to be filed with the NANPA on February 1, 2001 relating to the 847 NPA as well as all updated and supplemental NRUF reports relating to NXX and NXX-X code utilization. The subpoenas requested by the State's Attorney and the State's Attorney's ensuing access to the disaggregated confidential and proprietary data filed by the carriers, including Nextel, however, is expressly precluded by both the Federal Communications Commission's ("FCC") March 31,

2000 Numbering Resource Optimization Order¹ and the FCC's September 28, 1998

Memorandum Opinion and Order² and should therefore be denied.

The motion should be denied for the additional reasons that it ignores the Commission's January 24, 2001 Order in Docket No. 01-0065³ wherein the Commission ordered that the same information requested by the State's Attorney be provided to J. Seamus Glynn and fails to explain how providing the data to the State's Attorney would further aid the Commission in effectively carrying out its numbering administrative duties.

In support of its objection, Nextel states as follows:

1. On March 31, 2000, the FCC adopted a mandatory utilization data reporting requirement that provides that each carrier shall submit specified data to the North American Numbering Plan Administrator ("NANPA"), NeuStar, Inc., twice a year. (NRO Order, ¶¶ 5, 67.)
2. The carriers serving 312, 630, 708 and 773 Numbering Plan Areas, including Nextel, filed their number utilization data with the NANPA on February 1, 2001.

¹ See *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 7574, CC Docket No. 99-200, par. 81 (rel. Mar. 31, 2000) ("NRO Order").

² See Memorandum Opinion and Order and Order on Reconsideration, *In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania PUC Re Area Codes 412, 610, 215 and 717; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 13 FCC Rcd. 19009, CC Docket No. 96-98, par. 49 (rel. Sept. 28, 1998) ("FCC's 9/28/98 Opinion and Order").

³ As evidenced by its Response to the Government and Intervenors Motion to Obtain Access to Telephone Number Utilization Data filed November 21, 2000, Nextel strongly contests the Commission's right to provide disaggregated data to J. Seamus Glynn. Nextel also finds it extremely disturbing and inappropriate that the Commission appointed Mr. Glynn, the carriers' most vocal adversary, as its "expert" and disputes the accuracy of Mr. Glynn's analysis. However, the fact remains that the Commission ordered that Mr. Glynn receive the precise proprietary data requested by the State's Attorney, and Mr. Glynn's February 13, 2001 Report indicates that Mr. Glynn has received and is analyzing such data purportedly for the benefit of the Commission.

3. Nextel filed its data with the understanding that Neustar would "[m]anage proprietary data and competitively sensitive information and maintain the confidentiality thereof" as required by 47 C.F.R. § 52.13. (See also NRO Order, ¶ 75.)

4. At the time it filed its data, Nextel understood that the state commissions, including the Commission, would have access to the data in order for the state commissions to effectively carry out their duties as delegated by the FCC in the NRO Order. (Id., ¶¶ 75, 81.)

5. In submitting its data, however, Nextel also relied on the FCC's expressed intent that no entity, other than the FCC, the NANPA or the state commissions, would have access to the disaggregated data. Specifically, the FCC ruled that

state commissions shall have access to the disaggregated data submitted to the NANPA, and may choose to request copies directly from carriers, provided that the state commission has appropriate protections in place (which may include confidentiality agreements or designation of information as proprietary under state law) that would preclude disclosure to any entity other than the NANPA or the Commission.

(Id., ¶ 81.)⁴

6. The State's Attorney Motion states that the "FCC was silent as to whether other bodies of state government, such as the State's Attorney, could also have access to the data." (Mot. at 3.) This statement ignores the clear language of paragraph 81 of the NRO Order that specifically precludes the State's Attorney's request.

7. In addition to the clear ban on access expressed in the NRO Order, the FCC's 9/28/98 Opinion and Order also precludes the precise type of access to proprietary carrier data

⁴ The State's Attorney's Office's willingness to sign the Protective Order attached to its motion in order to obtain the disaggregated data misses the point because paragraph 81 mandates that the state commissions sign protective orders or institute other appropriate protections to preclude carrier data from being disclosed to any entity other than the FCC or the NANPA. (See NRO Order, ¶ 81.) It simply does not allow, as the State's Attorney's Motion presumes, the Commission to disseminate carrier data to third parties after the third party signs a protective order with the state commission.

that the State's Attorney attempts to justify by referencing the importance of the Commission's hearing process. (See e.g. Mot. at 6-7.) In paragraph 49 of the FCC's 9/28/98 Opinion and Order, the FCC authorized the Pennsylvania Commission to conduct hearings wherein certain evidence, including the carriers' confidential and proprietary information and data, could be presented. However, the FCC expressly "request[ed] that the Pennsylvania Commission not share the information with any party or entity other than this Commission." (emphasis added.)

8. Thus, not only does the State's Attorney's Motion fail to provide support for its unprecedented request, it fails to counter two FCC mandates banning such access.

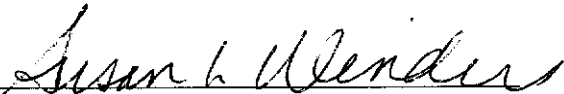
9. Finally, the State's Attorney's Motion ignores the Commission's January 24, 2001 Order in Docket No. 01-0065 wherein the Commission ordered that the same information requested by the State's Attorney be provided to J. Seamus Glynn, an "expert" designated by entities purportedly seeking to protect the public's interest, like the State's Attorney.⁵ (See e.g. Mot. at 8.) The Commission stated that it provided Mr. Glynn access to the proprietary data so that he could process the data to allow the Commission to effectively carry out its numbering administrative duties. In the face of the Commission's January 24, 2001 Order, the State's Attorney fails to demonstrate that providing the data to the State's Attorney would aid the Commission in effectively carrying out its numbering administrative duties.

⁵ As indicated above, Nextel strongly contests the Commission's right to provide disaggregated data to J. Seamus Glynn, finds it extremely disturbing and inappropriate that the Commission appointed Mr. Glynn, the carriers' most vocal adversary, as its "expert", and disputes the accuracy of Mr. Glynn's analysis.

WHEREFORE, Nextel Communications, Inc. respectfully requests that the Commission deny the State's Attorney's motion for issuance of subpoenas duces tecum.

Respectfully submitted,

Nextel Communications, Inc.

By: 
One of its attorneys

Boyd J. Springer
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VERIFICATION

Michael B. Stern, certifies that he: (1) is the Government Affairs Manager for Nextel Communications, Inc.; (2) has read the "Response to the Cook County State's Attorney's Motion for Subpoenas Duces Tecum"; (3) is familiar with the facts stated therein; and (4) such facts are true and correct to the best of his knowledge.


Michael B. Stern

SUBSCRIBED and SWORN to this
6th day of March, 2001.


Notary Public



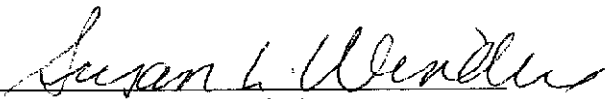
CERTIFICATE OF SERVICE

Susan L. Winders, an attorney, hereby certifies that on March 7, 2001, she served a copy of the "Response to the Cook County State's Attorney's Motion for Subpoenas Duces Tecum" upon the individuals shown on the attached Service List via U.S. First Class mail delivery. That same day, Ms. Winders certifies that she also served copies to the following individuals via Federal Express:

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